IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

MICHELLE T.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY AND C.T.,
Appellees.

No. 2 CA-JV 2018-0133
Filed October 24, 2018

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f);
Ariz. R. P. Juv. Ct. 103(G).

Appeal from the Superior Court in Cochise County
No. JD2017000066
The Honorable Karl D. Elledge, Judge

AFFIRMED

COUNSEL

Sarah Michèle Martin, Tucson
Counsel for Appellant

Mark Brnovich, Arizona Attorney General
By Cathleen E. Fuller, Assistant Attorney General, Tucson
Counsel for Appellee Department of Child Safety

Cochise County Legal Defender, Bisbee
By Benna R. Troup
Guardian ad Litem for Minor

MEMORANDUM DECISION

Judge Espinosa authored the decision of the Court, in which Presiding Judge Vásquez and Judge Eppich concurred.

E S P I N O S A, Judge:

¶1 Michelle T. challenges the juvenile court's order terminating her parental rights to C.T.,[1] born in December 2017, on abuse and neglect grounds and on the basis that her parental rights to another child, D.T., had been terminated for the same cause. *See* A.R.S. § 8-533(B)(2), (10). We affirm.

¶2 To sever a parent's rights, the juvenile court must find clear and convincing evidence establishing at least one statutory ground for termination and a preponderance of the evidence that shows terminating the parent's rights is in the child's best interests. *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶¶ 32, 41 (2005); *see also* A.R.S. § 8-863(B). We do not reweigh the evidence on appeal; rather, we defer to the juvenile court with respect to its factual findings because it "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts." *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4 (App. 2004). We will affirm the order if the findings upon which it is based are supported by reasonable evidence. *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 4 (App. 2002). We view the evidence in the light most favorable to upholding the ruling. *See Christy C. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 445, ¶ 12 (App. 2007).

[1]No notice of appeal by C.T.'s father appears in the record before us and he is not a party to this appeal. Insofar as Michelle purports to argue that the juvenile court erred by terminating C.T.'s father's parental rights, she lacks standing to do so. *See* A.R.S. § 8-235(A) (allowing appeal by "aggrieved party"); *In re Maricopa Cty. Juv. Action No. JS-5894*, 145 Ariz. 405, 408 (App. 1985) (mother lacks standing to assert that "termination of the relationship between her daughter and the child's natural father was improper"). Additionally, although Michelle intimates that C.T.'s counsel somehow acted improperly by advising this court of the fact that C.T.'s father is not a party to this appeal, that suggestion is perplexing, if not specious.

¶3 Michelle's parental rights to D.T., born in May 2014, were terminated on time-in-care and neglect and abuse grounds in November 2016. The juvenile court found D.T. had "barely survived a slow and systematic starvation at the hands of his parents," "a condition they did not seem to notice then or now." The court additionally noted D.T.'s parents "refuse[d] to accept their behavior caused" D.T.'s condition, "defied medical recommendations," "provided false information or omitted information to medical providers," and "impeded medical testing." Although Michelle filed a notice of appeal, that appeal was dismissed after her counsel filed an affidavit pursuant to Rule 106(G), Ariz. R. P. Juv. Ct., stating he had reviewed the record and found "no non-frivolous issues to raise."

¶4 Michelle's parental rights to J.T., born August 2015, were terminated in June 2017. The juvenile court found an adequate nexus between the abuse of D.T. and potential abuse of J.T. to warrant severance on abuse and neglect grounds, *see* § 8-533(B)(2), and concluded pursuant to § 8-533(B)(10) that termination was warranted because of the recent termination of Michelle's rights to D.T. The court noted she continued to disregard medical recommendations on feeding and had not accepted responsibility for D.T.'s malnutrition and the resulting harm. The court also found termination warranted on time-in-care grounds pursuant to § 8-533(B)(8)(c). Again, although Michelle filed a notice of appeal, her attorney filed an affidavit pursuant to Rule 106(G) and this court accordingly dismissed the appeal.

¶5 C.T. was removed from Michelle's care days after her birth in December 2017. The Department of Child Safety (DCS) moved to discontinue reunification services, and C.T.'s guardian ad litem (GAL) joined in that motion. The juvenile court found C.T. dependent as to both her parents in January 2018, with the court adopting a case plan of reunification. Shortly thereafter, C.T.'s GAL filed a petition to terminate both parents' rights based on abuse and neglect and the termination of their parental rights to D.T. and J.T. At a subsequent hearing, DCS withdrew its request to discontinue reunification services and the parties agreed that "a trial [would] be set on the Petition for Termination and that all the issues be consolidated."

¶6 After a two-day contested hearing, the juvenile court granted the termination petition on both grounds alleged, also concluding that termination was in C.T.'s best interests. The court found that Michelle still

had not "demonstrated an understanding or . . . true appreciation of the prior neglect and abuse of D.T." It noted, among other facts, her testimony at a temporary custody hearing in which she denied that D.T. had been severely malnourished, and her failure to acknowledge to an evaluating psychologist that her parental rights had been severed to D.T. due to abuse and neglect. This appeal followed.

¶7 Michelle first contends the juvenile court erred by terminating her parental rights pursuant to § 8-533(B)(10).[2] That provision authorizes the termination of parental rights when "the parent has had parental rights to another child terminated within the preceding two years for the same cause and is currently unable to discharge parental responsibilities due to the same cause." *Id.* The "same cause" refers to the "factual 'cause' that led to the termination" of Michelle's parental rights to D.T. and J.T., "and not the statutory ground or grounds that supported" those terminations. *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, ¶ 11 (App. 2004).

¶8 Michelle asserts the "cause" leading to her loss of parental rights was her failure to meaningfully participate in reunification services and, now that her participation in services has been more successful, the same cause does not exist here. As we noted above, Michelle's loss of her parental rights to D.T. and J.T. was based, in part, on time-in-care grounds which necessarily involves her failure to participate in services. *See* A.R.S. § 8-533(B)(8). But Michelle's argument disregards that her parental rights as to D.T. and J.T. were terminated on abuse grounds—specifically due to her failure to provide D.T. adequate nutrition and her failure to recognize her responsibility for that conduct. In this case, the juvenile court found that Michelle continues to deny her abuse of D.T. Thus, the "same cause" for termination of her parental rights continues to exist. And Michelle has not argued that her ongoing denial of her abuse of D.T. is an insufficient basis to conclude she is currently unable to safely parent C.T.[3]

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[2]Michelle also argues the juvenile court erred in terminating her parental rights pursuant to A.R.S. § 8-531(1). We agree with C.T., however, that the juvenile court's reference to § 8-531(1), the statutory definition of abandonment, was a typographical error; thus, we need not address this argument further.

[3]For the first time in her reply brief, Michelle cites her testimony acknowledging that "[t]here could have been more that we could have done" for D.T., apparently as evidence that she has admitted starving D.T. Even if we agreed with her characterization of this testimony, it was for the juvenile court to weigh and assess it, particularly in light of evidence that

¶9 Michelle also asserts that, to terminate her rights under (B)(10), DCS was required to prove that "further efforts toward reunification would be futile," citing *Mary Lou C.* Michelle apparently misreads that case—the court stated in *Mary Lou C.* that, in order for termination to be appropriate under § 8-533(B)(10), DCS "'was obliged to prove by clear and convincing evidence that it had made a reasonable effort to provide [Michelle] with rehabilitative services or that such an effort would be futile.'" *Mary Lou C.*, 207 Ariz. 43, ¶ 15 (quoting *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, ¶ 42 (App. 1999)). Michelle has not argued, below or in her opening brief, that the services provided were inadequate.[4] A parent who fails to object to the adequacy of services waives review of the issue. *Shawanee S. v. Ariz. Dep't of Econ. Sec.*, 234 Ariz. 174, ¶ 16 (App. 2014); *see also State v. Bolton*, 182 Ariz. 290, 298 (1995) (insufficient argument on appeal waives claim). Thus, we do not address this argument further.

¶10 Because the juvenile court did not err in terminating Michelle's parental rights pursuant to § 8-533(B)(10), we need not address her argument that the court erred in terminating her rights on abuse grounds pursuant to § 8-533(B)(2). *See Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, ¶ 27 (2000) (no need to address other statutory grounds for terminating parent's rights if sufficient evidence of one ground). Michelle additionally contends, however, that the court erred in finding termination was in C.T.'s best interests. She asserts, without citation to authority or legal argument, that the court should have viewed as "self-serving" the case manager's testimony regarding C.T.'s best interests. We will not second-guess the juvenile court's evaluation of that testimony. *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, ¶ 18 (App. 2009) (juvenile court in best

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Michelle disagreed with DCS regarding how C.T. should be fed. *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, ¶ 18 (App. 2009) (juvenile court in best position to weigh evidence, assess credibility of witnesses and resolve factual disputes); *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 12 (App. 2002) (this court will not reweigh evidence on appeal).

[4]In light of DCS's participation in the termination proceedings, we assume without deciding that the requirement identified in *Mary Lou C.* applies despite the termination petition being brought not by DCS, but by C.T. through her GAL. *See Mary Ellen C.*, 193 Ariz. 185, ¶ 32 (reasonable preservation efforts are "a necessary element of any state attempt" to terminate parental rights).

position to weigh evidence, assess credibility of witnesses and resolve factual disputes); *Jesus M.*, 203 Ariz. 278, ¶ 12 (this court does not reweigh evidence on appeal); *see also Bolton*, 182 Ariz. at 298.

¶11 Michelle also asserts the juvenile court erred by "focus[ing] on the adoptive parents' circumstances in contrast to the biological parents' circumstances in its best interest analysis." She thus seems to argue that the court must favor the biological parent in evaluating a child's best interests. But, although a court may consider a parent's participation in services, its best-interests evaluation must be focused on the child, and a court may not "subordinate the interests of the child to those of the parent once a determination of unfitness has been made" and must recognize the parent's interest has diverged from that of the child. *Alma S. v. Dep't of Child Safety*, 245 Ariz. 146, ¶ 15 (2018). Here, the juvenile court properly focused on C.T.'s interests in evaluating whether she would benefit from severance or be harmed if severance was denied. *See id.* ¶ 13. The evidence supports the court's conclusion that termination is in C.T.'s best interest.

¶12 The juvenile court's order terminating Michelle's parental rights to C.T. is affirmed.